

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

BERNARD KANE JOHNSON,

Petitioner,

v.

3:06-cv-29

VIRGINIA LEWIS, Warden,

Respondent.

**ORDER**

This is a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Clerk is **DIRECTED** to serve copies of the petition and this Order upon the respondent and the Attorney General for The State of Tennessee. Since it does not plainly appear from the face of the petition that it should be summarily dismissed, the respondent is hereby **ORDERED** to answer or otherwise respond to the petition within thirty (30) days from the date of this Order. Rule 4 of the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS. The respondent should specifically address whether the petition

was timely filed and whether the petitioner has exhausted his available state court remedies.<sup>1</sup>

28 U.S.C. §§ 2244(d), 2254(b).

**E N T E R:**

s/ Thomas W. Phillips  
United States District Judge

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<sup>1</sup>Pursuant to 28 U.S.C. § 2244(d), there is a one-year statute of limitation for state prisoners to file a habeas corpus petition in federal court; the limitation period generally runs from the date on which the judgment of conviction became final, with the provision that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." *Id.* § 2244(d)(2). Petitioner filed his habeas corpus petition within seven months of the conclusion of his state post-conviction petition. However, the record does not reflect the amount of time that elapsed between his judgment of conviction becoming final and the filing of the post-conviction petition. See *Payton v. Brigano*, 256 F.3d 405, 408 (6th Cir. 2001) (pending post-conviction petition "merely tolled, rather than reset," the one-year statute of limitation).